

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 946

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 2014

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 946, with committee amendments.

As amended, this bill concerns several aspects of court administration. It would: (1) establish statutory speedy trial deadlines for persons being detained in jail, both pre- and post-indictment; (2) reform the manner in which determinations for bail and other forms of criminal pretrial release are made; (3) provide courts with the authority to deny pretrial release and instead order pretrial detention; and (4) authorize the Judiciary to revise and supplement fees to help fund a pretrial risk assessment and monitoring program, and other court-related programs and services.

The provisions concerning categories (1) through (3), set forth as sections 1 through 11 of the bill, could only be implemented after enactment of an amendment to the New Jersey Constitution modifying the current constitutional right to bail for all persons (see N.J. Const. (1947), Article I, paragraph 11). These provisions would take effect on the first day of the 13th month next following the date of voter approval of such an amendment and the amendment becoming part of the constitution. The provisions concerning category (4), sections 12 through 19 of the bill, authorizing the Judiciary to revise and supplement fees for the pretrial assessment and monitoring program related to the bill and for other court-related programs and services would take effect immediately.

Speedy trial deadlines:

Based on suggested pre- and post-indictment deadlines contained in recommendations 10 through 14 of the publicly released March 10, 2014 report of the New Jersey Supreme Court's Joint Committee on Criminal Justice, the bill would establish the following deadlines:

- A person who has been charged with a crime and for whom pretrial detention is ordered could not remain detained in jail for more than 90 days on that charge prior to the return of an indictment. If the person is not indicted within the specified 90 days, the person would be released from jail upon motion of the person or on the court's own motion. Notwithstanding the court's previous findings (discussed in more detail below) for ordering the person's pretrial detention, the

court would release the person on the person's own recognizance or set appropriate non-monetary conditions for the person's release.

- A person who has been indicted and for whom pretrial detention is ordered could not remain detained in jail for more than 180 days on that charge following the return or unsealing of the indictment, whichever is later, before commencement of the trial. The 180-day time period would commence to run from the date the indictment is returned, or the person, if a juvenile, has been waived to adult court. In the event a person's trial does not begin within the specified 180 days, the person would be released from jail upon motion of the person or the court's own motion, unless the court finds that an injustice would follow from strict compliance with the person's release. If the court found, in the extraordinary case, that there has been a significant showing that an injustice would follow from strict compliance with the person's release from custody, the court could allocate an additional period of time in which the person's trial would commence before the person is released. Notwithstanding the court's previous findings for ordering the person's pretrial detention, the court would release the person on the person's own recognizance or set appropriate non-monetary conditions for the person's release to reasonably assure the person's appearance in court.

- In the event of a trial ordered after a mistrial or upon a motion for a new trial, such trial would commence within 120 days of the entry of the order of the court. A trial ordered upon the reversal of a judgment by any appellate court would commence within 120 days of the service of that court's trial mandate.

For any of the above deadlines, the bill sets forth periods, as calculated by the prosecutor, which would be excluded in computing the time within which a case would need to be indicted or tried, which include:

(1) the time resulting from an examination and hearing on competency and the period during which the person is incompetent to stand trial or incapacitated;

(2) the time from the filing to the disposition of a person's application for supervisory treatment pursuant to N.J.S.2C:36A-1 or N.J.S.2C:43-12 et seq., special probation pursuant to N.J.S.2C:35-14, regular probation drug court pursuant to N.J.S.2C:45-1, or other pretrial treatment or supervisory program;

(3) the time from the filing to the final disposition of a motion made before trial by the prosecutor or the person;

(4) the time resulting from a continuance granted, in the court's discretion, at the person's request or at the request of both parties;

(5) the time resulting from the detention of the person in another jurisdiction provided the prosecutor has been diligent and has made reasonable efforts to obtain the person's presence;

(6) the time resulting from exceptional circumstances including, but not limited to, a natural disaster, the unavoidable unavailability of

the person, material witness or other evidence, when there is a reasonable expectation that the person, witness or evidence will become available in the near future; and

(7) on motion of the prosecutor, the delay resulting when the court finds that the case is complex due to the number of defendants or the nature of the prosecution.

The speedy trial deadlines established by the bill would apply to any person who committed a crime on or after the applicable provisions became effective (the first day of the 13th month next following the date of approval of the constitutional amendment.

Reforms for bail and other pretrial release determinations:

To help support the bill's bail and other pretrial release reforms, the Administrative Director of the Courts would establish and maintain a Statewide Pretrial Services Program.

Under the program, a risk assessment would be conducted on any person committed to jail after being arrested on warrant for an initial charge involving an indictable offense or disorderly persons offense. This assessment would occur within 48 hours of the person's commitment to jail. The purpose of the assessment would be to make recommendations to the court concerning an appropriate pretrial release determination, including whether the person would be released: on the person's own personal recognizance or on execution of an unsecured appearance bond; on a non-monetary condition or conditions enumerated in the bill, including such conditions as avoiding contact with an alleged victim or witness, or reporting on a regular basis to a designated law enforcement agency; upon execution of a bail bond, other than an unsecured appearance bond; or, on a combination of monetary bail and non-monetary conditions. The Pretrial Services Program would also monitor each person granted any form of non-surety pretrial release by the court, including release on personal recognizance, unsecured appearance bond, or non-monetary condition or conditions.

The bill would require that the court make a pretrial release decision "without unnecessary delay," but in no case later than 48 hours after the commitment to jail. The court would consider the person's circumstances and the risk assessment performed by the Pretrial Services Program before making any pretrial release decision. When making that decision, if the court disapproved of a recommended condition of release made in the risk assessment, it would provide an explanation for such in the document authorizing the person's release.

The court would order pretrial release of the person on the person's own recognizance on execution of an unsecured appearance bond whenever the court determined that the person would appear in court as required, and would not pose a danger to any other person or the community.

However, if the court had concerns with the person's future court appearances or posing a danger to other persons or the community, it could alternatively order pretrial release subject to one or more non-monetary conditions, including but not limited to: avoiding contact with an alleged victim or witness; reporting on a regular basis to a designated law enforcement agency; remaining in the custody of a designated person who agrees to assume supervision and report violations of any release condition; or complying with a specified curfew. Such condition or conditions would be the least restrictive means determined by the court to be necessary to reasonably assure the person's court appearance and the safety of other persons and the community.

If release on non-monetary conditions alone would not reasonably assure the person's future court appearances, the court could instead order that person's pretrial release on monetary bail by means other than an unsecured appearance bond. The court could only impose such a financial condition to reasonably assure the person's future appearance. It could not impose such a condition to reasonably assure the safety of any other person or the community, or do so for the purpose of preventing the person's release.

If the court was not satisfied that monetary bail alone could reasonably assure future court appearances, or if the safety of other persons or the community was still a factor, the court could instead order pretrial release subject to a combination of monetary bail and non-monetary conditions.

Whenever a person was released, the court would notify the person of the conditions, if any, to which the release is subject, as well as the consequences for violating any such conditions, including the immediate issuance of a warrant for the person's arrest, and the criminal penalties for any such violation.

A person out of jail on pretrial release could have the conditions of the release modified or have the release revoked by a court, upon motion by a prosecutor, for violating a restraining order or condition of release, or a finding of probable cause that the person committed a new crime while on release, if the person was someone who was out on release after being charged with: (1) a crime of the first or second degree enumerated under subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), part of the State's "No Early Release Act"; (2) a crime for which the maximum sentence is life imprisonment; (3) any crime, if previously convicted of two or more crimes described in categories (1) or (2); (4) any crime involving a victim who is a minor; and (5) any crime that imposes a mandatory minimum term of imprisonment and parole ineligibility, due to the use or possession of a firearm while in the course of committing or attempting to commit the crime, as set forth in subsection c. of N.J.S.2C:43-6, part of the Graves Act (P.L.1981, c.31). The court could only take action to modify or revoke the person's pretrial release on a finding by clear and convincing

evidence that no monetary bail, non-monetary conditions of release, or combination thereof imposed on the person would reasonably protect the safety of any other person or the community.

Denial of pretrial release / pretrial detention:

Concerning the new authority for denying a person pretrial release, a prosecutor could file a motion, before or after a person secures pretrial release, seeking the pretrial detention of a person. Such detention would only be available for a person who was charged with any of the above described crimes that permit a court to modify or revoke a pretrial release, or for any other crime for which the prosecutor believes there is a serious risk that the person would not appear in court, would pose a danger to any other person or the community, or would obstruct or attempt to obstruct justice or threaten, injure, or intimidate a prospective witness or juror. A prosecutor, in seeking a pretrial detention proceeding for which there is no indictment, would be required to establish probable cause that the person committed the predicate offense.

Upon the filing of the motion for pretrial detention, and during any continuance of such motion, the person would be detained in jail, unless the person was previously released, in which case the court would instead issue a notice to compel the person's appearance at the pretrial detention hearing.

The court would hold a hearing to determine whether any amount of monetary bail, non-monetary conditions, or combination thereof could reasonably assure the person's future court appearance, or protect persons, the community, or the criminal justice process. In making a determination for or against pretrial detention, the court could rely upon the nature and circumstances of the offense charged, the weight of evidence against the person, the person's history and characteristics, and the recommendations concerning appropriate pretrial release determinations by the Pretrial Services Program risk assessment. Such determination would generally be supported by clear and convincing evidence for the court to order pretrial detention.

However, for the crime of murder or any crime for which the maximum sentence is life imprisonment, if the court found probable cause that a person committed such crime, there would be a rebuttable presumption that the person must be detained pending trial, because no amount of monetary bail, non-monetary conditions or release, or combination thereof would reasonably assure the safety of any other person or the community. This presumption could be rebutted by the person upon a showing of the preponderance of the evidence in support of the person. If the person cannot rebut the presumption, the court could order pretrial detention, but if rebutted, the prosecutor would have the opportunity to still establish grounds for pretrial detention.

Court fees to support pretrial assessments, other court-related services and programs

To help pay for the bill's new pretrial assessments and monitoring, as well as additional court-related programs and services, the bill provides that the Supreme Court may adopt Rules of Court to revise or supplement filing fees and other statutory fees payable to the court for the sole purpose of funding: (1) the development, maintenance, and administration of the above described Statewide Pretrial Services Program; (2) the development, maintenance, and administration of a Statewide digital e-court information system, that incorporates electronic filing, service of process, document and case management, financial management, and public access to digital court records; and (3) the provision of legal assistance to the poor in civil matters by Legal Services of New Jersey. As a limit on the court's authority, all existing filing and statutory fees could not be increased or supplemented more than \$50 in the aggregate for each such fee.

The bill would establish in the General Fund a dedicated, non-lapsing fund to be known as the "21st Century Justice Improvement Fund." This fund would be annually credited with a sum equal to the yearly revenue to be derived from the incremental amounts of any fees payable to the court that are revised or supplemented pursuant to the bill and the related fee revisions as provided by operation of N.J.S.22A:2-5 (*fees payable in the Appellate Division, designated to be the same as those payable in the Supreme Court*) and section 2 of P.L.1993, c.74 (C.22A:5-1) (*fees payable in the Tax Court, designated to be the same as those payable in the Superior Court*). The fund would be administered by the State Treasurer.

Monies annually credited in the "21st Century Justice Improvement Fund" would be allocated as follows:

- (1) \$15 million would be appropriated annually to the Judiciary to be used for the Pretrial Services Program;
- (2) \$17 million would be appropriated annually to the Judiciary for the Statewide digital e-court information system;
- (3) \$10.1 million would be appropriated annually to the Department of the Treasury for distribution to Legal Services of New Jersey and its affiliates to facilitate the provision to the poor of legal assistance in civil matters; and
- (4) Any remaining amounts still in the fund would be retained by the Judiciary for the sole purpose of developing, maintaining, and administering court information technology.

No later than the sixth month after the end of each State fiscal year the Administrative Director of the Courts would submit a report to the Governor, the President of the Senate, and the Speaker of the General Assembly describing the Judiciary's use of funding provided through the bill and its progress toward the development, maintenance and administration of the Statewide Pretrial Services Program and Statewide digital e-court information system. Legal Services of New Jersey also would submit a detailed financial statement to the same parties plus the State Auditor, describing how funds provided pursuant

to the bill were used for the provision of legal assistance to the poor in civil matters. Additionally, the bill requires that the use of public funds appropriated to Legal Services of New Jersey would be subject to oversight by the State Auditor.

The authority of the Supreme Court to revise or supplement any filing fees and other statutory fees under the bill would expire approximately seven months after the enactment of those sections of the bill establishing that authority, except that any fees that have been revised or supplemented would continue in effect, subject to the following:

Within 30 days of the fifth anniversary of the effective date of the Rules of Court first adopted concerning any fees, and additionally within 30 days of the tenth anniversary of that effective date, the Supreme Court could review all such fees revised or supplemented utilizing its rulemaking process, which includes a reasonable opportunity for public comment, to determine if the fees should remain unchanged as originally adopted pursuant to the bill or be reduced to reflect the funding needs associated with the purposes set forth in the bill for which the “21st Century Justice Improvement Fund” provides monies.

Finally, concerning court fees, as well as judicially imposed financial obligations, and related charges owed to a court when such are processed using credit cards, debit cards, or any other accepted electronic method, the bill updates existing law to authorize, pursuant to Rules of Court, the Administrative Office of the Courts to assess, collect, and pay service charges and other costs resulting from the collection and processing of such fees, obligations, and charges. Any service charges and other costs assessed and collected by the Administrative Office of the Courts, with the exception of those charges or costs assessed and collected on behalf of municipal courts, would be deposited in the “Court Computer Information System Fund” established by subsection c. of section 1 of P.L.1994, c.54 (C.2B:1-4).

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

- establish the statutory pre- and post-indictment speedy trial deadlines described above;
- re-title the court’s Pretrial Services Unit as the Pretrial Services Program, to be operated on a Statewide basis without the requirement of operating in each county;
- replace references to “sureties” with the term “monetary bail”;
- clarify that all persons committed to jail after being arrested on warrant for an initial charge involving an indictable offense or disorderly persons offense would be subject to a risk assessment by the Pretrial Services Program, and thereafter given consideration for pretrial release or detention under the bill’s provisions;

- require courts to make pretrial release decisions without unnecessary delay, but in no case later than 48 hours after a person's commitment to jail;
- require consideration of the person's circumstances and the Pretrial Services Program risk assessment before a court makes a pretrial release decision;
- clarify the courts' options for pretrial release based on monetary bail, non-monetary conditions, or a combination thereof;
- indicate that monetary bail may only be imposed to reasonably assure a person's future court appearance, and not to reasonably assure the safety of any other person or the community, or for the purpose of preventing pretrial release;
- clarify the role of prosecutors in filing motions seeking a person's pretrial detention;
- specify that pretrial detention hearings, if occurring after a person's first court appearance or if there is no first appearance, would be scheduled within three working days of the prosecutor's motion filing, unless the prosecutor or the person seeks a continuance;
- indicate that upon the filing of a pretrial detention motion, and during any continuance thereof, the person would be detained in jail; but if the person was previously released the court would instead issue a notice to compel the person's appearance at the pretrial detention hearing;
- require that for a pretrial detention hearing for which there is no indictment, the prosecutor would be required to establish probable cause that the person committed the predicate offense;
- provide for a rebuttable presumption that a person be detained pending trial for the crime of murder or any crime for which the maximum sentence is life imprisonment, if the court found probable cause that the person committed such crime;
- concerning expenditures from the "21st Century Justice Improvement Fund," eliminate the specified order in which monies credited annually are to be appropriated;
- eliminate the appropriation of funds going to the General Fund (not to exceed \$10 million), following the specified appropriations for the Pretrial Services Program, Statewide digital e-court information system, and Legal Services of New Jersey;
- eliminate the process under which Legal Services of New Jersey would cease getting monies from the fund if the organization received annual grants of \$25 million or more from the State Bar's Board of Trustees of Income on Non-Interest Bearing Lawyers' Trust Accounts, thereby allowing the organization to continue receiving monies from the fund;
- restore the authority of the various State and municipal courts to establish systems to accept payments of court fees, judicially imposed obligations, and related charges by various electronic methods, and clarify the authority of the Administrative Office of the Courts to

assess, collect, and pay service charges and other costs resulting from the collection of such fees, obligations, and related charges;

- require that service charges and other costs collected by the Administrative Office of the Courts would be deposited in the “Court Computer Information System Fund,” except for those charges and costs assessed and collected on behalf of municipal courts;

- update internal references and cross-references to the various sections of the bill to reflect the renumbering of sections and other changes made by the amendments;

- update the effective date to specify that the sections concerning the Judiciary’s authority to revise and supplement fees for the pretrial assessment and monitoring program related to the bill and for other court-related programs and services would take effect immediately, while the remainder of the bill would take effect after voter approval of a constitutional amendment concerning the denial of pretrial release as described above; and

- update the bill synopsis to reflect the various changes made by the amendments.

FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that the implementation of speedy trial deadlines and bail reforms would most likely decrease the number of individuals incarcerated in the county jails awaiting trials thus generating an indeterminate savings for the counties. The savings per each county would be determined by the number of individuals released as a result of this bill. These savings could be offset by the proposed requirement that all persons committed to jail after being arrested on warrant remain incarcerated until the AOC conducts risk assessments rather than be allowed to post immediate bail. The bill requires that these assessments occur within 48 hours of incarceration. The AOC would incur undetermined costs to establish the new Statewide Pretrial Services Program for these assessments and to conduct the assessments.

The OLS also notes that implementation of the speedy trial provisions enumerated in the bill would impose additional responsibilities upon the courts, prosecutors and public defenders. In order to meet the requirements for speedy trial, the courts would require an undetermined number of judges to expedite these trials, and prosecutors and public defenders offices would require staff to research and prepare for trial within the allotted time at an undetermined cost.

The OLS notes that the bill also gives the AOC the authority to increase court fees in order to fund (1) the proposed Statewide Pretrial Services Program (\$15 million), (2) a Statewide digital e-court information system (\$17 million) and (3) funding for Legal Services of New Jersey (\$10.1 million). Any funds collected above the specified amounts would be retained by the Judiciary for the development,

maintenance and administration of court information technology. The AOC has informally indicated that it would increase fees to raise \$42 million, the amount necessary to fund the purposes outlined in the bill. The OLS also notes that since the fees to be increased are not specified by the bill, the actual amount of collections is unknown and therefore it cannot estimate with any reliability the amount of revenue that would be generated by the bill.